

☒ R/W MANUAL CHANGE  
(1993 Edition)

**RWMC- 167**

☐ PROCEDURAL HANDBOOK  
(1984 Edition)

RWPH-\_\_\_\_-\_\_\_\_-\_\_\_\_  
TRANSMITTAL#\_\_\_\_

TITLE:  
LOCAL PROGRAMS

APPROVED BY:

  
SUZETTE M. MUSETTI

DATE ISSUED:

**FEB 23 2007**

Page 1 of 1

SUBJECT AREA:

CHAPTER 17 - LOCAL PROGRAMS

ISSUING UNIT:

OFFICE OF APPRAISALS AND LOCAL PROGRAMS

SUMMARY OF CHANGES: Updates Section 17.04.09.06; revises Exhibit 17-EX-10; and updates Tables of Contents for sections and exhibits.

### **PURPOSE**

This manual change updates Section 17.04.09.06 by deleting the current text in order to create a reference to Exhibit 17-EX-10.

### **BACKGROUND**

This updates the manual to include provisions contained in the memos: "Processing of Department Resolutions of Necessity (RON) through the California Transportation Commission (CTC), County Board of Supervisors (Board) or City Councils (Council)" dated December 5, 2003, and "Streamlining the Resolution of Necessity Process" dated July 22, 2005.

### **PROCEDURES**

17.04.09.06	Deletes language in the section and adds "Refer to Exhibit 17-EX-10."
17-EX-10	Adds two memos to the exhibit as noted above.

### **EFFECTIVE DATE**

Immediately.

### **MANUAL IMPACT**

- Remove the superseded pages and insert the attached pages in the Manual.
- Record the action on the Revision Record.

### **REVISION SUMMARY**

<u>Chapter</u>	<u>Remove Old Pages</u>	<u>Insert New/Revised Pages</u>
	Remove the following in its entirety:	Replace with the following in its entirety:
17 - Sections	Table of Contents (REV 12/2006) 17.04.00.00 (REV 12/2006)	Table of Contents (REV 2/2007) 17.04.00.00 (REV 2/2007)
17 - Exhibits	Table of Contents REV 12/2005 Exhibits 17-EX-10 (6/2002)	Table of Contents REV 2/2007 Exhibits 17-EX-10 (REV 2/2007)

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## **17.04.00.00 – LOCAL PUBLIC AGENCY PROJECTS ON THE STATE HIGHWAY SYSTEM**

### **17.04.01.00      Local Public Agency Projects on the State Highway System - Background**

All Local Public Agency (LPA) projects on the State Highway System (SHS), within the existing or proposed right of way, are subject to the requirements of the Right of Way Manual (R/W Manual).

Projects having as little as \$1 in federal funding in any phase of the project are classified as Federal-aid projects. Projects with no federal dollars in any phase of the project are not Federal-aid projects. Both types of projects on the SHS are subject to the provisions of Department policies and procedures, including the R/W Manual.

The Department is the owner-operator of the SHS. After construction is complete and the project is accepted, the Department remains responsible for operations and maintenance and retains tort liability, which explains why there is such a comprehensive level of involvement. All SHS projects must be developed in accordance with Department standards and practices, including planning, design, right of way acquisition, and construction.

Background and guidelines for these projects are found in Deputy Directive 23 (DD-23), *“Developing Special Funded Projects,”* dated June 28, 1994. (See Exhibit 17-EX-7.)

Prior to a Local Public Agency (LPA) beginning work on any project on the SHS, there must be either an executed Cooperative Agreement (when project costs exceed \$1 million, or when there is Right of Way involvement), or an Encroachment Permit must have been issued (when total project costs are less than \$1 million and there is no Right of Way involvement).

### **17.04.01.01      Locally Funded Projects**

Locally funded projects are projects on the SHS sponsored by an LPA. The funding sources may include impact mitigation fees charged to private developers, funds derived from assessment districts, contributions from private developers, the LPA share of gas tax funds, federal funds, and local property taxes.

### **17.04.01.02      Sales Tax/Measure Projects**

Sales Tax Measure projects are local agency projects where the LPA is the Sales Tax Measure Authority. Sales Tax Measure projects are identified in an approved Sales Tax Measure Expenditure Plan or Strategic Plan, are funded 50% or more from local sales tax revenues, and have no funding in the State Programming documents. Sales Tax Measure projects on the SHS require a Cooperative Agreement.

As the owner-operator of the SHS, the Department is *usually* responsible for performing and funding all project development work through the environmental document and project approval phase. The sponsor is responsible for performing and funding project development, right of way, and construction at its expense. If the Department is unable to meet the sponsor’s schedule, the sponsor may assume the responsibility for the preparation of all project development work with the appropriate oversight to be provided by Department. The responsibilities of the Department and the Measure Authority must be addressed in the Cooperative Agreement.

If requested by the sponsor, the Department may perform some of the services for which the sponsor is responsible on a reimbursed basis—if Department has sufficient reimbursed budget authority. When the Department does work on a reimbursed basis, an Agreement is required to provide for the reimbursement. (See Section 17.04.05.03, “Capital Support Reimbursed Work,” and Section 17.07.00.00, “Cooperative Agreements.”)

#### **17.04.01.03**      **Partnership Projects**

Either the Department or an LPA sponsors this type of project. There is a variety of funding sources, which may include tax measure proceeds, local, state or federal monies, and direct contributions to the local agency from developers. The Department may be only a financial contributor, but may also be responsible for certain aspects of the projects such as construction management. Roles, responsibilities, and funding obligations must be defined in one or more Cooperative Agreements, regardless of the amount contributed by the project sponsor or the Department. (For additional detail, see Section 17.07.00.00, “Cooperative Agreements.”)

#### **17.04.01.04**      **Privately Funded Projects**

Owners or developers of property adjacent to or near the SHS can use their own funds to construct, repair, or improve any portion of the highway. Some of these projects are undertaken to mitigate impacts or to improve access to the development. Privately funded projects are defined as projects on the SHS, which are sponsored by a private, nonpublic entity and have no funding in a State programming document.

When a new, privately funded project is proposed, a decision must be made in designating the project sponsor. The Department strongly encourages LPAs to sponsor privately funded projects to demonstrate community acceptance of the project and to improve coordination with other local agencies. If a proposed privately funded project is sponsored by an LPA, it will then be processed as a locally funded project.

If an LPA does not sponsor the project, the Department will work directly with the private sponsor. As the owner-operator responsible for assessing the impact of new projects on the existing SHS, the Department is responsible for the preparation of the PSR at Department’s expense. It is the responsibility of the private sponsor to provide suitable engineering data, as well as technical and financial information needed for the Department to prepare the PSR. The private sponsor may prepare and submit a draft PSR, at its own expense, to expedite the project development process. The sponsor is responsible for performing all subsequent project development, right of way, and construction activities, with the Department providing oversight at the private project sponsor’s expense.

A Highway Improvement Agreement accompanied by an Escrow Agreement, if applicable, will be required for all privately funded projects. The private sponsor must follow the Department’s Manual for projects on the SHS.

#### **17.04.01.05**      **Public Toll Roads**

These projects use locally generated funds to build toll roads, which will ultimately be part of the SHS. The toll revenues are used to reimburse the costs in constructing the facilities.

#### **17.04.02.01**      **Project Estimates**

The Right of Way estimate is the first step in building a credible budget. The reliability of estimates for project costs at every stage in the development process is necessary for sound project management. The elements of an estimate allow R/W Planning and Management to forecast capital outlay support, personnel requirements, capital outlay expenditures, and future programming needs.

For projects where the Department is responsible for preparation of the Right of Way Data Sheet, the Region/District’s R/W Estimating units are often called on to provide cost estimates with little lead time and with only very preliminary studies available. As the project design is progressively refined, alignment changes routinely occur with widespread and consequential impacts. Accordingly, when establishing right of way widths, initial consideration should always be given to the need for maintenance access, drainage, noise barriers, material sites, construction work areas, etc.



Estimates, even at an early stage, are often viewed as a Department financial commitment by LPAs that use the data to develop their project's budget. In the case of tax measure initiatives, project sponsors do not have the option of raising additional funds if there are cost increases and are consequently left with a serious shortfall of funds and/or the need to reduce the number or size of their projects during the life of the tax measure. This can become a very critical and sensitive issue. It is therefore very important that estimates are made with care and are based on the best information available at the time.

When LPAs are preparing their own project estimates, the Right of Way estimates must be prepared by Right of Way staff of a Qualified Local Agency or a Right of Way Consultant that has either an Appraisal License or a Real Estate License with a minimum two years of experience and the knowledge necessary to estimate the value of all types of real estate needed for transportation projects.

The Right of Way Local Programs Coordinator should provide assistance whenever possible. For additional detail, refer to Chapter 4, "Estimating," in this Manual.

#### **17.04.02.02**      **STIP Requirements**

Special funded projects, prior to authorization to proceed with project development, should have an approved PSR, environmental clearance and, as applicable, be included in the STIP. During development of each STIP cycle, the Regional Transportation Improvement Plans (RTIPs) should incorporate locally funded projects where a concept has been agreed on and there is a firm funding commitment by a resolution or other documentation from the LPA even if they are not included in the STIP. Special funded project costs in the STIP include all Department project support costs for each of the following four components:

1. All permits/environmental studies;
2. Preparation of the PS&E;
3. Right of Way Acquisition; AND
4. Construction/construction management, engineering (including surveys and inspections).

If the Department and an LPA agree, they may recommend that a new special funded project will be jointly funded. In this case, the LPA will nominate its share in the RTIP and the Department will nominate the interregional share in the ITIP.

#### **17.04.02.03**      **Support Budget for Special Funded Projects**

All special funded projects on the SHS must be included in the District's database, whether PMCS or XPM, even if they are not included in the STIP. The Department *or* LPA Data Sheet is the source from which resources are entered into PMCS via the COST screens.

**NOTE:** Failure to include all special funded projects will result in the Local Programs' oversight PYs being underallocated.

PMCS and XPM databases must also be regularly updated to reflect the project's current status, e.g., workload, production, or scheduling changes. This is crucial to ensure the oversight PYs are properly budgeted.

In preparing a support budget for work on Special Funded projects, a Region/District must plan for activity in two general areas:

1. The Region/District's support budget must include effort performed in preparation of the PSR, the environmental document, oversight, project certification, and general advice and assistance for LPAs undertaking the projects. These estimates must be considered in light of the Region/District's experience with acquiring agencies as to the degree of oversight and assistance necessary to certify projects. The Region/District must properly flag LPA projects so that budget personnel can identify the resources needed. The projects' PMCS Cost Screen should reflect full right of way effort as though Right of Way was doing the work. As a general rule of thumb, Right of Way oversight or contract administration is estimated at 10% of total PY effort. The Right of Way Coordinator must maintain close liaison with the unit developing special funded projects, whether it is the DLAE or Project Development staff to obtain the latest estimates of the type and number of projects expected.
2. In Regions/Districts where reimbursed work is performed, the costs must be specifically budgeted before the work may be undertaken.

#### **17.04.02.04**      **Project Report/Project Study Report (PR/PSR)**

The Project Report (PR) and Project Study Report (PSR) are essentially feasibility studies, which develop both the project's scope and schedule. These documents identify alternate proposals for the project and contain preliminary analyses of the costs, impacts, and requirements. They also detail a crucial element: whether the project results in significant capacity improvement, which is defined as either an increase in capacity more than two miles long or the construction of a major freeway-to-freeway interchange. The combined PR/PSR was designed for noncomplex, noncontroversial projects.

For tax measure projects, Right of Way participates in the preparation of the PSR as part of the project development team and by producing a R/W Data Sheet which contains the estimated R/W capital outlay requirements for the project, as well as an estimate of the amount and type of work to be performed.

#### **17.04.02.05**      **Final Design/Plans, Specifications, and Estimate (PS&E)**

The final design and PS&E must be approved by the Department and must conform to Department standards and practices.

#### **17.04.02.06**      **FHWA Role - Mixed Funding**

Special funded projects can have a mixture of funding, including both State and federal as part of the LPA's share. When projects utilize federal funding for right of way acquisition or construction or when modifications are made to an Interstate freeway in which FHWA has already participated, FHWA approval is required. Dependent on the funding mixture, the approval mechanism is often an Authorization to Proceed (E76). In instances where there is no federal funding, the approval mechanism is the approval of the NEPA document. All projects on the NHS must be approved by FHWA.

#### **17.04.02.07**      **NEPA/CEQA**

All special funded projects must comply with the California Environmental Quality Act (CEQA). Any project where Federal-aid funds are used or where modifications are made to an Interstate freeway in which FHWA has already participated, must comply with the National Environmental Policy Act (NEPA).

#### **17.04.02.08**      **Hazardous Waste Studies**

All transportation projects on the SHS require the investigation and avoidance, if possible, of any exposure to hazardous waste products. Examples of hazardous waste include petroleum products, pesticides, organic compounds, heavy metals, or other compounds that are injurious to human health or the environment. All projects, which include the purchase of right of way, excavation, or the demolition/modification of structures, will require at a minimum an Initial Site Assessment to determine if any known or potential hazardous waste exists within the project area. The Department's hazardous waste policy and procedures are set forth more fully in Chapter 7, "Appraisals," Chapter 8, "Acquisition," and Chapter 12, "Clearance and Demolition," of this Manual, and Chapter 18 of the *Project Development Procedures Manual*.

#### **17.04.03.01**      **Advance Right of Way Activities**

In order to avoid loss of federal funds as well as ensure project approval, regular right of way acquisition activities (a written offer) must not be conducted by an LPA on a proposed project prior to completion of the environmental process. The LPA may, however, commence "regular" project appraisals if the following has occurred: (1) the draft environmental document must have been circulated, (2) the public hearing process completed, (3) a preferred alternative has been approved, and (4) the project is not controversial. This policy is necessary to avoid any possible allegations of such acquisitions predetermining the proposed project location and design alternatives.

In all other instances, preliminary regular right of way activities that can be performed are those necessary for completion of the environmental impact assessment and preparation for public hearings. If the project does not meet the criteria stated above, "regular" appraisals cannot commence nor should the property owner be contacted. Activities that can be performed are limited to obtaining general appraisal information for later appraisals as well as work on relocation assistance studies and preliminary utility relocation efforts up to, but not including, the issuance of the Notice to Owner to Relocate.

#### **17.04.03.02**      **Advance Acquisitions**

Some limited acquisitions may take place prior to completion of environmental and hearing requirements. These acquisitions may include the following, which are also discussed in the Acquisition Chapter in this Manual. It is emphasized that each type of acquisition described below may only take place prior to environmental approval and location selection if:

- The LPA shows compliance with applicable acquisition rules. (For details, refer to Chapter 8, "Acquisition," in this Manual.)
- Advance acquisitions (hardship and protection) shall not influence the environmental process for the project, including decisions relative to the need to construct the project or the selection of specific alternative locations.
- A Categorical Exemption package along with a request for either a hardship or protection acquisition has been submitted to FHWA and approved.

#### **17.04.03.03**      **Advance Acquisition - Procedures**

LPAs making such acquisitions are encouraged to use Department procedures to consider and evaluate advance acquisition requests in conformance with State and Federal criteria. All decisions to acquire under these guidelines should be thoroughly documented. Also if the environmental and route location processes have not been completed, the advance acquisition must not influence the environmental assessment of the proposed project, nor can they influence the decision relative to the need to construct the project or the selection of a specific location.

All advance acquisitions must comply with Title VI of the Civil Rights Act of 1964 and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended.

A request to acquire hardship or protection acquisitions prior to completion of environmental clearance requirements must be authorized in advance by FHWA's regional office if FHWA has already approved the project with the proposed acquisitions. This prior FHWA approval for the advance acquisition is required even if the right of way costs will be paid with the LPA's own funds and the project will later be programmed for Federal-aid construction costs.

Close cooperation and communication between the Region/District R/W Coordinator, the DLAE, and the LPA are necessary in order to ensure that eligible costs are neither prematurely submitted for reimbursement nor overlooked entirely when they in fact become eligible for reimbursement.

#### **17.04.03.04**      **Hardship Acquisition**

A hardship is defined as a situation where unusual personal circumstances accrue to an owner of property and are aggravated or perpetuated by reason of a pending transportation facility purchase and cannot be solved by the owner without acquisition by the LPA. See Chapter 5, "Corridor Preservation, Hardship, and Protection," of this Manual. FHWA retains approval of hardship acquisitions.

#### **17.04.03.05**      **Protection Acquisition**

A protection acquisition is one required to prevent development of property in the path of a proposed project route that would cause higher acquisition and construction costs and relocation of people and businesses if deferred. FHWA retains approval of protection acquisitions. See Chapter 5, "Corridor Preservation, Hardship, and Protection," of this Manual.

#### **17.04.03.06**      **Early Acquisition**

Refer to Exhibit 17-EX-20 for details.

#### **17.04.03.07**      **Dedications**

A dedication is the setting aside of property for public use, without compensation, as a condition prior to the granting of a permit to construct, a zoning variance, or a conditional use permit, etc. The project's timing, i.e., when the additional right of way is required for the highway improvements, dictates whether the Department or the LPA (usually City or County) accepts title to the parcel at the time of dedication. The property owner will normally initiate the request to the LPA that triggers the dedication. Valid dedications can however be accepted throughout the project development process.

There are a number of situations in which dedications occur. Some examples are as follows:

1. When the additional right of way is required for highway improvements that are being constructed in conjunction with a developer's project.
2. When LPAs require the dedication of property rights in conformance with the agency's adopted General Plan. In these cases, in exchange for permits, variances, or land use changes, LPAs require the dedication of property to the setback or the ultimate right of way line as reflected in their General Plan.

#### **17.04.03.08**      **Donations (Contributions)**

A donation is the voluntary conveyance of property, without compensation, for the improvement of a current or future public project. Donations of right of way may be accepted from an owner/owners if owner/owners do so voluntarily and are advised of their right to compensation. The owner/owners must be provided with an appraisal of the real property to be acquired, or a waiver valuation, if appropriate, unless the owner/owners release the LPA from such obligation. The waiver of just compensation and/or release from obligation to provide an appraisal must be documented. Exhibit 17-EX-8 has been approved for this purpose and should be used whenever donations are offered and accepted. The offer to donate should originate with the property owner and must not in any way result from an act of coercion or suggestion by the LPA.

Property owners who offer to donate should be advised of their right to reserve airspace development rights as set forth in Streets and Highways Code 104.12, which states if leased property was provided for SHS purposes through donation or at less than fair market value, then the lease revenues shall be shared with the donor or seller if so provided by contract when the property was acquired.

Donations may be made at any time during the development of a project. However, any document executed to effect a donation prior to approval of the environmental clearance of the project shall clearly state that:

1. All alternatives to a proposed alignment will be studied and considered.
2. Acquisition of property shall not influence the environmental assessment of a project including the decision relative to the need to construct the project or the selection of a specific location; and
3. Any property acquired by donation shall be revested in the grantor or successors in interest if such property is not required for the alignment chosen after completion of the environmental clearance and public hearing, if required.

Once the environmental and route location process requirements are satisfied and regular Right of Way activity is under way, donations may be accepted by the acquiring agency as part of their regular acquisition program, provided the restrictions referred to above are followed.

#### **17.04.03.09**      **Donations (Credit for Local Match)**

The fair market value of donations can be considered eligible as local matching funds whenever federal funds participate.

#### **17.04.03.10**      **Acquisition of Excess**

To avoid involvement in an excess lands disposal program, Regions/Districts as a general rule should not acquire or accept title to future excess land in the Department's name in conjunction with the acquisition of the rights of way on special funded projects. If the excess is acquired, the acquisition should be via a second deed vesting the excess land portion in the LPA. Where right of way lines are indefinite, excess may be acquired in the Department's name with the understanding that all excess land acquired by the state will be deeded back to the LPA for their disposal upon completion of the highway construction.

#### **17.04.03.11**      **Sale or Exchange of Excess Property**

Special funded projects may involve the acquisition of property that becomes excess to Department needs as a result of interchanges being removed or reconfigured, ramps being relocated, etc.

Streets and Highways Code Section 118 permits the Department to sell or exchange right of way when it is determined that the property is no longer needed for highway purposes. On these projects, in the furtherance of our partnership approach, it is the Department's policy to cooperate with the LPA sponsor in making possible the exchange of state excess for property acquired by the LPA.

A valuation of the property involved will be completed by the Department's Right of Way staff. The value of the property acquired for state highway improvements should normally be of equal or greater value than the value of state excess property to be exchanged. If the state excess has greater value, the entities should normally pay the state the cost difference. However, the value of the state highway facility improvements financed by the entity may be factored into exchange values if it is in the best interest of the state.

The real property exchange should be considered during early stages of project development whenever possible and addressed in the appropriate project development document (PSR, PSR/PR, etc.). Terms and conditions of the property exchange should be included in the Cooperative Agreement. The property exchange is subject to CTC approval.

**NOTE:** Where State funds participate in right of way acquisition, either on or off the State Highway System, the proportionate share of proceeds from the sale of excess real property shall be returned to the Department. The LPA shall contact the Department's Right of Way Liaison in their area prior to the sale of excess real property.

#### **17.04.04.01**      **Utility Relocation**

In order to ensure utilities are relocated in timely fashion, it is crucial that early liaison be established between the utility companies and the design unit. This early involvement will help determine where potential conflicts exist, where possible design changes would preclude the need to relocate the utility and, if utility relocation is required, allow the utility company to budget the necessary staffing and capital outlay required to carry out the relocation activity on a schedule compatible with the project certification requirements.

Utility relocation can commence after the environmental document is approved and continue concurrently with the property acquisition process. Although it is preferred to have all utility relocations completed before the highway construction begins, utility relocation work may continue through the construction process. All utility relocations must comply with state and federal laws and conform to Department specifications. For additional discussion, refer to Chapter 13, "Utility Relocation," in this Manual and Chapter 14, "Utility Facilities," in the *Local Assistance Procedures Manual*.

#### **17.04.04.02**      **Utility Master Contracts**

The Department has entered into master contracts with a number of the larger utility owners for the apportionment of relocation costs on freeway projects. These contracts are to be applied in lieu of otherwise applicable Streets and Highways Code sections and are applicable to all freeway projects on the SHS no matter what the source of project funds or the agency responsible for project design. The terms of the Master Contract determine the cost apportionment, but as a general rule, utility activities fall under the Master Contract terms whenever those activities support the construction, maintenance, improvement, or repair of the freeway, regardless of whether such activities take place within the right of way, outside the right of way on other public property, or outside the right of way on private property. In order that the Department not be inadvertently assessed utility activity costs which ought to have been paid by the LPA, it is extremely important that the Cooperative Agreement contain utility relocation clauses that are not modified unless Region/District Right of Way Utility Relocation section has been consulted and has agreed in writing to any proposed clause changes. The only exception to the use of the Master Contract is when the freeway improvement project is an LPA-imposed mitigation requirement arising as a result of developer request for property improvement. In this case the developer will be responsible for all utility relocation costs in accordance with applicable case law.

#### **17.04.04.03**      **High/Low Risk Utility Facilities**

All underground high and low risk utility facilities within the State Highway rights of way shall be handled in accordance with the Department's "Policy on High and Low Risk Underground Facilities Within Highway Rights of Way." The LPA's Project Engineer must complete the Certification required by the policy.

#### **17.04.04.04**      **Agreement for Positive Location of Underground Utilities (Pos-Loc)**

In an effort to accelerate project delivery and eliminate discovered utility work, the Department has implemented the Positive Location ("Pos-Loc") Program. Pos-Loc is a project delivery activity using state administered contracts to expose underground utilities for state highway projects, using vacuum excavation methods.

The Department has entered into a standard "Agreement for the Positive Location of Underground Utilities" with willing utility companies that call for the Department to pay 100% of all positive location (pothole) work for all projects on the State Highway System.

Local Public Agencies responsible for delivering Utility Relocation Services for projects on the State Highway System are required to implement this policy.

Please refer to the Right of Way Utilities Web site at <http://www.dot.ca.gov/hq/row/utility/> for information regarding utility companies that have executed Positive Location Agreements and names of the Department's Utility Coordinators in your area. Additional information regarding the Positive Location Agreement process can be found in Chapter 13, "Utility Relocation," of this Manual.

#### **17.04.05.01**      **Cooperative Agreements**

After the PSR is approved, the LPA(s) and the Department jointly develop and execute a Cooperative Agreement(s) which contains all the respective responsibilities and funding roles for the various phases of project development and construction. All special funded projects on the SHS with construction costs *greater* than \$1,000,000 require Cooperative Agreements. Please see Section 17.07.00.00 for further discussion.

**NOTE:** Projects with construction costs *less* than \$1,000,000 can also be quite complex due to funding or other factors. A Cooperative Agreement is the only practical way to adequately memorialize the respective agreements and responsibilities in projects involving right of way and/or right of way utilities. The Department should enter into a Cooperative Agreement in all such cases and the \$1,000,000 threshold figure should be ignored.

#### **17.04.05.02**      **Tracking of Right of Way Expenditures**

It is crucial that each Region/District have a responsible Right of Way Project Coordinator/Administrator to track the monthly/total expenditures for each project from the inception of the Right of Way activities. Some of the responsibilities are to ensure that each Cooperative Agreement is current and adequately funded. If additional resources are needed, the Cooperative Agreement must be amended. If resources have been exhausted, all right of way activities must stop and cannot continue until an amendment has been executed and additional resources secured.

#### **17.04.05.03**      **Capital Support Reimbursed Work**

The Region/District's Right of Way staff may perform work for LPAs on Locally Funded projects on the State Highway System and be reimbursed pursuant to a Cooperative Agreement. Any new or revised Cooperative Agreements for reimbursed work require individual approval from your Deputy District Director for Program and Project Management.

Each Region/District has an allocation of reimbursed Capital Outlay Support for the current fiscal year. The allocation lists both the District's work and work done for the District by the Division of Engineering Services and other units. Each District may enter into new or revised agreements for reimbursed work as long as no agreement increases the total reimbursed work on its projects in any future year above its current allocation. The District may submit these agreements to the Cooperative Agreement Branch in the Division of Design with a statement signed by its Deputy District Director for Program and Project Management, stating "This agreement will not increase the level of Capital Outlay Support reimbursed work on District \_\_\_\_ projects in any future year to a level above the current allocation. This includes work by the Division of Engineering Services and other units that work on the District's projects." The Cooperative Agreement Branch will process your agreement if it has this signed statement. If a proposed cooperative agreement would lead to an increase in the total reimbursed work on your projects in any future year, please contact your counterparts in the other Districts to determine if they expect a commensurate decrease. You may trade future reimbursed work. The new Department policy for performing reimbursed work is set forth in Project Management Directive (PMD-010), *Capital Support Reimbursed Work*, dated December 21, 2001 (Exhibit 17-EX-9).



#### **17.04.05.04      Reimbursed Supervision**

On some locally funded projects, when the appropriate approvals provided for above have been obtained, the Department will provide supervision of an LPA's right of way activities. In this context, reimbursed supervision includes providing the necessary review and approvals to complete the Right of Way phase of the project.

**NOTE:** The difference between the Department (or a qualified LPA) providing "oversight" and "supervision" involves the *approval* of work products. These review/approval responsibilities must be included in the Cooperative Agreement.

#### **17.04.05.05      LPA Qualification Requirements**

Qualified LPAs may perform the right of way functions for which they have been approved. Nonqualified LPAs must utilize one of the options listed under Section 17.05.07.01. (See Section 17.05.00.00, "Local Agency Qualifications," and Section 17.06.00.00, "Consultant Qualifications.")

#### **17.04.06.01      Special Funded Projects - Duties**

In addition to the general duties described at Section 17.02.04.03, other Right of Way duties may include the following:

- A. Coordinating with the Region/District Planning and Management Branch to ensure that all special funded projects are included in PMCS/XPM and are updated as necessary on the Status of Projects report.
- B. Coordinating/assisting in the preparation of the Project Study Report, the Project Report, cost estimates, etc.
- C. Coordinating/assisting with the preparation of Cooperative Agreements or Highway Improvement Agreements.
- D. Coordinating the Department's line functions (e.g., appraisals, acquisition, relocation, etc.) when their assistance is necessary in performing oversight or when the state performs these functions as reimbursed work.
- E. Providing oversight during the right of way phase (if these functions are performed by others) to ensure that all right of way activities and "deliverables" conform to state standards. [See Section 17.04.06.02, "Oversight (Quality Assurance)."]
- F. Approve the Right of Way Certification. (See Section 17.08.00.00, "Project Certification.")

#### **17.04.06.02      Oversight (Quality Assurance)**

The Department, as the ultimate owner-operator of the SHS, will always be liable for maintenance and operation of the System and retains tort liability once the completed project has been accepted. Furthermore, as also discussed above, on special funded projects, the Department plays an active role in the project development process. Department approval is required for the Project Report and the PS&E. The Department usually prepares the environmental document (which may require extensive Right of Way involvement). During the right of way phase, we are very much concerned with the quality of the work product and therefore with the qualifications of the parties performing this work. It is therefore in our best interest to become as involved in the projects as staff time permits. Project sponsors, whether LPAs or private entities, are responsible for funding these projects, but often need Department involvement to become familiar with the development process and requirements. For our purposes here, this involvement is referred to as oversight. The Department funds its oversight activities on special funded projects unless the project is privately sponsored. On private projects, the project sponsor is responsible for the cost of oversight.

Oversight is an intensive level of Department staff involvement in providing review of all right of way activities, and acting as a resource for information on Right of Way Manual requirements. LPAs negotiating Cooperative Agreements should be made aware as early in the process as possible that Department staff will play an active role in reviewing the right of way activities for the project. (See Exhibit 17-EX-11, "Functional Responsibilities," Oversight.)

Oversight responsibility begins with providing the LPAs all applicable manuals, handbooks, guidelines, etc., containing the federal and state requirements and regulations. It can include assistance in preparing and reviewing the Project Study Report, maps, cost estimates, R/W data sheets, utility relocation arrangements and schedules, and any other requirements for the project. It can also include qualifying LPAs to perform their own right of way functions and assisting nonqualified LPAs to retain qualified consultants. Of particular concern to the state, oversight should include the review of a representative sampling of "deliverables," i.e., right of way maps, appraisals, acquisition files (deeds, contracts, diaries, etc.), RAP files (claims, payments, diaries, etc.), and review and approval of the LPA's R/W Certification.

Oversight responsibilities extend beyond the project certification and include whatever efforts are necessary to ensure that the right of way acquired for the project is properly conveyed to the Department and that our requirements are satisfied pertaining to system integrity (e.g., title, description, and monumentation).

#### **17.04.06.03**      **Expenditure Authorizations - Oversight**

As noted above, each special funded project will be the subject of a Cooperative Agreement. (See Section 17.07.00.00, "Cooperative Agreements.") When the Agreement is being developed and in particular after the Agreement is approved, the Local Programs' role is *usually* one of oversight. Each Cooperative project will have an Expenditure Authorization (EA) assigned. Local Programs staff may be involved in activities from a project's inception through the end of construction. Consult Division of Right of Way's Time Charging Manual for appropriate time charging codes.

#### **17.04.07.01**      **Appraisal Requirements**

Purchase of the required right of way can be made only after a written appraisal of its market value has been made and approved. All projects on the SHS require an appraisal review process which at a minimum:

- A. Requires a qualified reviewing appraiser review the appraisal to assure it meets applicable appraisal requirements and shall, prior to approval, obtain any necessary corrections or revisions.
- B. If the reviewing appraiser is unable to approve or recommend approval of the appraisal as an adequate basis for the establishment of just compensation and it is not practical to obtain an additional appraisal, the reviewer, acting as reviewing appraiser, may develop appropriate appraisal documentation to support an approved or recommended value.
- C. Requires a signed statement, which identifies the appraisal report reviewed and explains the basis for such recommendation or approval. In addition, any damages and/or benefits to the remainder must be identified in the statement.

#### **17.04.07.02**      **Dual Appraisal Requirements**

The Department requires dual appraisal reports for unusually complicated parcels or parcels exceeding \$500,000 in value. This amount includes improvements pertaining to the realty, severance damages, and construction contract work. This is to ensure that the owner receives just compensation and those large or complicated appraisals are documented and conclusions supported. Section 7.01.00.00 in Chapter 7, “Appraisals,” in this Manual contains the Department’s requirements for dual appraisals.

Dual appraisals shall be separate and fully independent in calculations, analysis, and conclusions. This will give a better basis for determining market value and help ensure a sound offer.

#### **17.04.07.03**      **Waiver of Dual Appraisals**

Dual appraisals are required for parcels expected to exceed \$500,000 in value or which involve complex or controversial appraisal problems. There is an exception process in Section 7.01.07.01 that provides for waiver of dual appraisals.

It is our responsibility to point out those appraisal situations where it may be prudent or helpful to have two appraisal opinions. It is the LPA management’s responsibility to decide if they are comfortable with only one appraisal when the values may be several hundred thousand dollars of measure money, compared to the cost of a second appraisal.

If the LPA is hiring a review appraiser, then the review appraiser will make a recommendation in writing to the LPA to either require dual appraisals or waive the dual appraisal requirements. The LPA will make a decision based on the recommendation. The LPA can decide to follow the recommendation or not follow the recommendation, but they do need to consider the recommendation and keep it in the documentation of the file. If the LPA waives the dual appraisal requirement and the work is being done by consultants, this decision means the LPA would only contract for one report.

If the LPA is relying on the Department to fulfill the duties of appraisal review, then the LPA staff should be made aware of dual appraisal or potential dual appraisal situations as soon as the Department becomes aware of them. The Department will make a recommendation in writing to the LPA concerning waiver of dual appraisals. The decision to waive the dual appraisal requirements rests with the LPA.

If the Department is doing the appraisal work for the LPA on a reimbursed basis and the LPA decides that only one appraisal is needed, then the Department would prepare only one report. The single Department report would still be subject to the normal cumulative review process of approval.

Note: Where the LPA is the project lead, the final decision on the question of dual appraisals rests with the LPA.

**NOTE:** For additional details and a description of the appraisal requirements, please refer to Chapter 7, “Appraisals,” in this Manual.

#### **17.04.07.04**      **Access Control - Private Property Benefits**

Access control changes that directly benefit or serve private property require that compensation be paid for the increased value of the property. The increased value is determined by a “before and after” appraisal of the property.

For additional information, refer to Chapters 7 and 16 of the Right of Way Manual.

#### **17.04.07.05**      **New Public Road Connection - Benefits**

If the proposed access opening or modification is for the purpose of allowing a new public street connection, compensation as defined above will be required unless the street clearly serves a public purpose and there are no abutting private properties that would receive a preponderance of benefit due to increased development potential.

**NOTE:** For additional discussion of these policies, refer to Chapter 26 and Chapter 27 of the *Caltrans Project Development Procedures Manual*.

#### **17.04.08.01**      **Special Funded - Power of Eminent Domain**

Upon request by the Department, a city may acquire property for state highway purposes and may take title in the name of the state or the city (Streets and Highways Code Section 113). A similar power is granted to counties under Streets and Highways Code Section 760.

In general, there are no comparable legislative provisions authorizing transit/transportation/measure authorities to acquire property by condemnation or take title to property acquired for state highway purposes. In the absence of specific statutory authority, local traffic authorities do not have power to take title to real property to be used for state highway purposes. Conversely, the state is not authorized to take property by eminent domain in the name of the traffic authority.

#### **17.04.08.02**      **Acquisition Settlements**

The decision as to the most effective way to acquire the necessary rights of way is the responsibility of the LPA. The Department’s *usual* role is limited to oversight. Within this context, LPAs must review and approve their own administrative authorizations and/or settlement amounts, exchanges, etc., according to the criteria contained in the Right of Way Manual. The Department’s role is to ensure that such acquisitions are in conformance with the Uniform Act and that such actions do not deprive the property owner of just compensation.

Whenever the Department is performing acquisition for an LPA on a reimbursed basis and an administrative settlement or statutory offer is proposed, the LPA must be involved in and approve any amount over the approved appraisal.

#### **17.04.09.00**      **Condemnation for LPA Projects - General**

The power of eminent domain can only be exercised if the condemning authority can establish:

- The necessity of the project,
- The project location is most compatible with the greatest public good and least private injury,
- And, the property is necessary for the project.

State statute allows the California Transportation Commission, cities and counties to hear and adopt resolutions of necessity for the acquisition of property needed for projects on the State Highway System. The exercise of eminent domain to acquire property for state highway purposes can be accomplished only by the state (Department) or by the county or city in which the property is located. (Also see Exhibit 17-EX-10 in this Chapter.)

The steps involved in taking resolution requests to a local board begin during the draft cooperative agreement phase. The local agency must have entered into negotiations to draft an agreement for the project. There must be a draft cooperative agreement. The decision to take Resolutions of Necessity to the Local Board of Supervisors or City Council is made for the project in its entirety. In addition to any language that may appear in the Cooperative Agreement, the local entity must obtain approval in writing from Headquarters Right of Way to proceed to take Resolutions of Necessity before the appropriate local body.

If the LPA is to hear the resolutions, then the city council must pass a resolution, by two-thirds vote, agreeing to hear the Resolutions of Necessity for the project. If the county is to hear the resolutions, then the county must pass a resolution, by four-fifths vote, agreeing to hear the Resolution of Necessity for the project.

If the county or city elects not to undertake this activity on behalf of another LPA (e.g., a Transportation Authority), then the Department should assume this task. The cost for providing legal services is reimbursable and the requirement for this service must be included in the Cooperative Agreement or Right of Way Services Agreement. In addition, prior budgetary authority for reimbursable work must be obtained.

#### **17.04.09.01**      **Approval for Local Agencies to Hear Resolutions of Necessity**

The Region/District will help to facilitate the submission of an approval package to the Chief of the Division of Right of Way in Headquarters. The package must include all of the following:

- Justification for the request
- Documentation of the resolution from the governing body of the city or county agreeing to acquire property for State Highway purposes and to hear resolutions
- Description of the project, i.e., number of parcels, maps, proposed construction project
- Proposed schedule for acquisition
- Draft copy of the cooperative agreement

The package will be logged in at Headquarters Right of Way and forwarded to the appropriate office chief, either Acquisition or Local Programs for review and recommendation. Final decision will rest with the Chief, Division of Right of Way.

A log will be kept in Headquarters of the approvals and denials. Once Headquarters has notified the Region/District of approval, then the Region/District is responsible for notifying the local agency in writing that they may proceed with the acquisition of real property or interest therein. The notification must designate the limits of the project under recommendation.

#### **17.04.09.02**      **Notice of Intent**

The local agency is required to follow the Department's Notice procedures. Please see Section 9.01.04.00. A Notice of Intent to adopt a Resolution of Necessity can only be served after the grantor has been given a reasonable amount of time to consider the offer presented. The Notice of Intent cannot be served immediately following the offer to acquire.

**NOTE:** In all cases, a copy of each Notice of Intent is to be sent to the Region/District Right of Way Local Programs Coordinator.

#### **17.04.09.03**      **Resolution of Necessity**

In all cases the resolution package must be reviewed and approved by the appropriate Legal Office in accordance with the authorizing agreement prior to being heard. The resolution must satisfy all of the requirements of the Code of Civil Procedures (CCP), Title 7, Chapter 4, Article 2. In the case where the LPA performs the legal activities, the LPA's Legal Counsel may be designated by the agreement to process the resolution package.

The Resolution of Necessity must contain a general statement of the public use for which the property is being acquired and must reference the appropriate statute for the property rights to be acquired by eminent domain. Frequently cited references are:

- Streets and Highways Code Section 102 allows for acquisition by eminent domain for state highway purposes
- CCP Section 1240.410 – the acquiring agency is acquiring a remnant of such size, shape or condition that it will have little market value
- CCP Section 1240.510 – the property is being acquired from another public agency for a compatible use
- CCP Section 1240.610 – the property is being acquired from another public agency for a more necessary public use
- CCP Section 1240.220 – the public agency is acquiring additional property for future use, requires owner's consent
- CCP Section 1240.150 – entire parcel is to be acquired when the remainder would be of little value to the owner, requires owner's consent

The resolution must also contain a general location and extent of property rights to be acquired to allow for reasonable identification. The resolution document must declare the public finds each of the following:

- Public interest and necessity require the project
- The project is located in a manner to provide the greatest public good and least private injury
- The property is necessary for the project
- An offer has been made to purchase the property in accordance with Section 7267.2 of the Government Code

Upon passage of a resolution, a copy of that resolution must be sent to Region/District Right of Way Local Programs.

#### **17.04.09.04**      **Request to Appear**

Statute allows the property owner fifteen days within which to request an appearance before the board hearing the resolution request. If a Request to Appear is not timely, then the right to appear has been waived and the resolution will be heard as a consent item. Exceptions to timely requests may be granted jointly by the delivering agency and the governing body. The reasons for exception will be documented in every case. Possible reasons are documented illness or documented travel.

If the owner requests an appearance, then the local agency must follow a review process. The review process may require postponement of the date the resolution is heard before the CTC, County Board of Supervisors or City Council.

The Condemnation Evaluation Meeting and Condemnation Panel Review Meeting provide a forum where property owners can meet with Local Agency Right of Way and Design managers in an effort to resolve design issues. These reviews address the concerns of the property owner. It is important that a decision-maker be included in the review process. Occasionally, certain acceptable design exceptions with minor impact can satisfy the property owner's concerns. The Condemnation Evaluation Meeting and the Condemnation Panel Review Meeting may be combined only when there are no design issues. If there are no design issues, then the decision to combine the two meetings is made by the LPA.

#### **17.04.09.05**      **Reviews Prior to Appearance (Heard by California Transportation Commission)**

When a request for an appearance is on a Resolution of Necessity to be heard by the California Transportation Commission (CTC), regardless of who is performing the right of way and design activities, the Department will conduct the Reviews, and will make the presentation before the Commission. Appropriate local agency staff shall participate in the reviews and may be asked to be present at the Commission meeting.

#### **17.04.09.06**      **Reviews Prior to Appearance (Heard by City Council or County Board of Supervisors)**

Refer to Exhibit 17-EX-10.

#### **17.04.09.07**      **Condemnation Responsibilities (Department)**

Following are the usual responsibilities of the respective parties whenever the Department undertakes legal services for the acquiring agency and which must be included in the Cooperative Agreement:

- A. Legal opinions and advice in all matters relating to the right to acquire the property for the project or to the valuation of said property.
- B. Department will obtain the necessary Resolution of Necessity from the CTC, or other appropriate body.
- C. Attorney services in connection with selection of witnesses for trial, the preparation and conduct of the trial, post-trial motions and appellate proceedings in condemnation cases for the acquisition of property or actions to acquire possession of property.
- D. Attorney services as necessary or required for property management and/or relocation assistance proceedings.

**17.04.09.08**      **Condemnation Responsibilities (LPA)**

In preparation for condemnation, the LPA will *normally* provide the following:

- A. Current title reports with indications of each interest to be named in the lawsuit and updates of such reports as necessary.
- B. Relocation assistance certificates of occupancy indicating names of persons of other entities in possession of the property.
- C. An adequate legal description of the property.
- D. Right of Way/Parcel maps as required for condemnation complaints.
- E. All notices and reports necessary to obtain Resolutions of Necessity including reports and/or presentations where an owner seeks to exercise his right to appear before the appropriate governing body to contest the necessity for the taking.
- F. Documents necessary to deposit the just compensation with the State Treasurer.
- G. Necessary information for obtaining orders of possession.
- H. All efforts required to process suit papers and to file, serve, and prepare proof of service documents for required summons, complaints, and orders for possession.
- I. An authorized representative from the LPA who will appear at the hearing before the appropriate governing body to adopt the Resolution of Necessity.

**17.04.09.09**      **Condemnation Trials Responsibilities (LPA)**

In preparation for trial, the LPA will *usually* provide the following:

- A. A copy of the LPA's staff appraisal report.
- B. Relevant acquisition files and data, including copies of parcel diaries, correspondence, and other related material.
- C. Engineering witnesses familiar with the property to be acquired, the proposed project and the improvements associated therewith.
- D. All maps, exhibits, and photographs required for trial.



- E. Expert appraisal witnesses, subject to prior approval by the Department's Legal Division. All witnesses shall be made available to Legal for preappraisal and presubmission meetings to ensure they are proceeding on legally proper grounds.
- F. If private sector consultants are used, service of the LPA's acquisition consultant to assist Legal at the trial, to the extent that Right of Way Agents typically provide such services.

The LPA is also responsible for depositing sufficient funds with the Department to cover jury fees, deposits of probable just compensation for orders of possession, all trial preparation costs such as witness fees, deposition fees, and attorneys' fees.

#### **17.04.10.01**      **Property Management - Income**

Pursuant to Streets and Highways Code Sections 104.6 and 104.10, twenty-four percent (24%) of the gross rental income derived from property acquired in the state's name is to be transferred to the county in which rental income is derived. These sections are applicable whenever property is vested in the state's name regardless of the source of money to acquire the property and who will provide the property management services to the LPA. Pursuant to Streets and Highways Code Section 104.13, the Department is responsible for the payment of possessory interest taxes on leased property held for future state highway needs and for excess lands. All funds distributed to a county (24%) pursuant to Section 104.10 are considered to be the full or partial payment of the total possessory interest taxes due.

The above distribution of funds must be clearly detailed in the Cooperative Agreement or Right of Way Services Agreement with the LPA, particularly in situations where another LPA is acting as an agent for the Department in providing the property management services.

If Department is providing the property management, the balance of gross rental receipts (less adjustments for possessory interests and/or 24% allocation) will be transferred to the LPA. Costs incurred in conjunction with property management activities are reimbursable costs and will be part of the advance deposit for estimated support costs. The LPA will not be paid interest on rental income.

#### **17.04.11.01**      **Local Agency Relocation Assistance Appeals Process**

Whenever the LPA is proposing to do their own relocation assistance work, they must have an appeal process that meets the Uniform Act/CFR requirements and is approved by the Department.

The District must approve the process and the Appeals Board members or hearing officers designated by the LPA. The submittal to the Department should include the following:

1. Assurances that all persons receiving relocation assistance will be advised of their right to appeal.
2. The names and qualifications of prospective members of an Appeals Board or appeal review officers. (Note: Appeals Board members should not be persons who are involved in the relocation claims process nor any supervising persons involved in the claims process.)

3. The LPA's plan for hearing appeals in a timely manner and advising the appellant of the outcome of the hearing.
4. Assurances that all appellants who do not receive the total relief requested will be advised of their right to seek judicial review.

#### **17.04.12.01**      **Project Certification**

The LPA sponsor is responsible for certifying that physical and legal possession of the necessary right of way has (or will be) obtained, that all occupants have vacated the property, and that all acquisition and relocation activities comply with applicable state and federal laws. The certification must be submitted to the Department for approval with the following information and attachments: status of required right of way, agreements for possession and use, compliance with relocation assistance program, status of affected railroad facilities, material and disposal sites, specific authorization and utility contract for utility relocation. For an additional discussion of the Certification process, see Section 17.08.00.00, "Project Certification," and Chapter 14, "Project Certification," in this Manual.

#### **17.04.13.01**      **Acceptance of Title by Caltrans**

The LPA sponsor is responsible for delivering title to the right of way acquired for the project to the Department free and clear of all encumbrances detrimental to Department's present and future uses.

The Department will accept the completed special funded project into the SHS, provided the project was approved and that right of way was acquired in accordance with Department practices. See *Guidelines for Local Agency Involvement in Right of Way Acquisitions and Delivery of Projects on the State Highway System*, dated December 10, 2001 (Exhibit 17-EX-10). To ensure compliance, the following procedures have been adopted:

##### **A. LPA-Sponsored Projects (Public Projects)**

1. The LPA prepares and submits to the Local Programs Coordinator the acquisition documents (Right of Way Contract, Grant or Easement Deed, escrow instructions, etc.) for each acquisition transaction.
2. The Coordinator reviews and approves the transaction and arranges for the authorized District Right of Way representative to acknowledge acceptance of the deed.
3. Upon acceptance, the Region/District will submit the Deed and escrow instructions to the title company.
4. The title company, upon receipt of a check from the LPA (or the Department, if appropriate), will close escrow, issue a policy of title insurance as in the amount specified in the escrow instruction letter, and record the deed vesting title in the LPA or state, free and clear of all liens and encumbrances except as otherwise stated.

##### **B. Private Developer-Sponsored Projects (Private Projects):**

1. The Developer acquires the necessary rights of way with title vested in the developer's name.
2. The Developer provides the Department, prior to the issuance of an encroachment permit, a Right of Way Certification and acquisition package consisting of a Grant Deed vesting title in state's name, a Policy of Title Insurance, and escrow instructions for each parcel acquired.

3. R/W reviews the certification and acquisition package(s) and prepares a Memorandum of Settlement.
4. R/W confirms that the certification and acquisition documents are correct, signs R/W Certification, and notifies the Encroachment Permits Branch.
5. The state grants the encroachment permit to Developer.
6. Prior to acceptance of the completed project by the Department, the Grant Deed conveying title to the state is recorded and a policy of title insurance naming the state is issued.

#### **17.04.14.01      Assessment Districts**

In order to minimize future controversy, in cases where LPAs wish to utilize assessment district procedures in acquiring rights of way, the following procedure has been established:

##### **A. Requirements for Prior Department and FHWA Approval (Where Necessary)**

For each project where the local share is to be provided by an assessment district (construction and/or right of way reimbursement), the LPA sponsor shall receive prior Department approval of its intended assessment district procedures. If the project has federal aid, FHWA approvals are also required.

##### **B. Procedure for Securing Approval**

At the field review stage, the LPA seeks the Department and FHWA's approval (when necessary), submitting its intended assessment procedures and a description of the method its valuation engineer will use to determine individual assessments.

The District forwards the assessment procedures to Headquarters for approval.

The request, when appropriate, is then forwarded to FHWA for approval. Each level of approval should be obtained before Right of Way activities are commenced.

##### **C. Criteria to be Used in Granting Approval**

The following criteria will be used by the Department and FHWA (where appropriate) to determine whether the proposed assessment district is consistent with the requirements of 49 CFR 24.A-C.

1. All property to be acquired must be appraised in accordance with existing procedures.
2. The assessment may not be made on a formula which would automatically increase an owner's share if the owner successfully secures a higher payment through the judicial or negotiation processes.
3. An assessment must be based on a relationship attributable to the special benefit each individual property owner receives and not by the costs and amount of right of way acquired. A consistent method of assessment will be done on a districtwide basis.
4. The inclusion of severance in deriving the method of assessment may conflict with the concept of all properties being benefited by the project unless the damages are offset by benefits, as actually determined, in an after condition.
5. Funds received from property owners in the assessment district cannot duplicate Federal funds to be applied to the highway project, but must be limited to the local share of the total project cost.

**NOTES:**

## CHAPTER 17

### Local Programs Table of Contents

#### EXHIBITS

(in the order in which they appear in the text)

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17-EX-2	Flow Chart of Right of Way Procedures	Section 2
17-EX-3	RTPA, MPO Jurisdictions (Map showing all respective jurisdictions in the State)	Section 2
17-EX-4	Simplified Statewide and Regional Planning and Programming Cycle	Section 2
17-EX-5	DRE Legal Opinion/1995 Transmittal Memo to Districts	Section 3
	Checklists from each of the R/W functional areas (6A-6F):	
17-EX-6A	Appraisal Review Checklist	Section 3
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17-EX-7	Policy for Developing Special Funded Projects	Section 4
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17-EX-11	Functional Responsibilities (Monitoring/Oversight Comparison)	Section 4
17-EX-12	Qualification Questionnaire (LPA)	Section 5
17-EX-13	Hold for Future Use	
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17-EX-16	Right of Way Certification - Sample Letter (Private Projects) - See Exhibit 17-EX-18	Section 8
17-EX-17	No Right of Way Certification	Section 8
17-EX-18	Right of Way Certification (LPA certifications for all projects, including Indemnification Clause by Local Agency)	Section 8
17-EX-19	EEM Agreement Declaring Restrictive Covenants (ADRC) - Sample Only	Section 9
17-EX-20	Guidelines for LPA Early Acquisition Prior to Environmental Approval (Projects on State Highway System Only)	Section 4

**GUIDELINES FOR LOCAL AGENCY INVOLVEMENT  
ON THE STATE HIGHWAY SYSTEM**

(Form #)

State of California

Business, Transportation and Housing Agency

**M e m o r a n d u m**

To: DISTRICT DIRECTORS  
Attention: Region/District Division Chiefs  
Right of Way  
Project Management

Date: December 10, 2001  
File: LOCAL PROGRAMS  
LP 01-1

From: DEPARTMENT OF TRANSPORTATION  
DIRECTOR'S OFFICE – 49

Subject: Guidelines for Local Agency Involvement in Right of Way Acquisition and Delivery of Projects on the State Highway System

The following supersedes previous guidelines issued dealing with Local Agency involvement in Right of Way (R/W) Acquisition and Delivery of Projects on the State Highway System dated July 24, 2001. The aforementioned guidelines have been revised to allow the funding source for right-of-way support to be the control for performance of right-of-way activities, regardless of the funding source for right-of-way capital.

**TRANSPORTATION CONGESTION RELIEF PROJECTS (TCRP) ON THE STATE HIGHWAY SYSTEM**

It is the Department's policy that TCRP projects be managed in the same fashion as all projects on the State Highway System. To accomplish this, the California Transportation Commission (CTC) adopted Resolution G-00-23 guidelines for the development and implementation of the TCRP on September 28, 2000. These guidelines provide some flexibility in providing R/W services to ensure timely and cost effective delivery of the TCRP. TCRP guidelines call for the following:

- TCRP funds are allocated by the CTC on a project-by-project basis.
- TCRP funds are allocated only after the Department has reviewed and the CTC has approved an application for the funds.
- The Department or Local Agency may take the lead in preparing the application. The application will identify which agency, the Local or the Department, will act as the implementing agency.
- If the Department is the implementing or lead agency then the TCRP funds will be treated as "State" funds within these guidelines.
- If the Local Agency is the implementing or lead agency then the TCRP funds will be treated as "Local Agency" funds within these guidelines, and the Local Agency has the option of performing the R/W work themselves, if it is a qualified agency, or selecting the Department or other qualified R/W organization (either public or private) to deliver the right-of-way component.

# **GUIDELINES FOR LOCAL AGENCY INVOLVEMENT ON THE STATE HIGHWAY SYSTEM (Cont.)**

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For the purposes of these guidelines:

- "LOCAL AGENCY" funds are funds such as tax measures, property tax, developer fees, Federal subvention, (e.g., Regional Surface Transportation Program (RSTP), Congestion Mitigation and Air Quality Improvement Program (CMAQ), and TCRP Funds where the Local Agency is the designated implementing or lead agency, etc.).
- "STATE" funds are State Transportation Improvement Plan (STIP) funds, which include the Regional Improvement Plan and Interregional Improvement Plan, State Highway Operational Protection Plan (SHOPP), and TCRP Funds when the Department is the designated implementing or lead agency.

## **GUIDELINES FOR ALL PROJECTS ON THE STATE HIGHWAY SYSTEM**

### **Land Acquisition:**

- Where all project right-of-way support costs or right-of-way support for specific parcels is funded 100 percent with "Local Agency" funds, the Local Agency may perform all right-of-way work with its own staff, or contract for right-of-way services on the parcels it is funding, regardless of the funding source for right-of-way capital. Included in the work that the Local Agency may perform with its own staff, or contract out, are R/W Engineering, Appraisals, Acquisitions, Relocation Assistance, and Legal Services. All work is to be performed consistent with departmental policies and subject to departmental "Quality Assurance."

Nothing in the above is meant to preclude the Department from performing right-of-way activities (including legal) on parcels funded in total by a Local Agency when an approved cooperative agreement is in place.

- Where all project right-of-way support costs or right-of-way support for specific parcels is funded 100 percent with "State" funds, the Department is the responsible agency for performing all right-of-way activities on the parcels it is funding, regardless of the funding source of right-of-way capital.
- Where right-of-way capital and support are 100 percent "State" funded, or specific parcels in a jointly funded project are 100 percent "State" funded (both capital and support) the Department is the responsible agency for performing all right-of-way activities.
- Where right-of-way support is a mix of "Local Agency" and "State" funds for particular parcels or projects, the Department is the responsible agency for performing all right-of-way activities.

### **Prerequisites to Resolution of Necessity - First and Second Level Review Requirement**

- Department policy requires a First, and if necessary, Second Level Review prior to seeking a RON.

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- This policy applies regardless of whether the R/W effort is performed by the Department and/or a Local Agency, or what body hears the RON request.
- In all cases, regardless of whether the R/W effort is performed by the Department and/or a Local Agency, First and Second Level Reviews will be administered by the Department under the direction of Region/District R/W as outlined in sections 9.01.06.00, 9.01.07.00, and 9.01.08.00 of the Department's R/W Manual and as outlined in Bob Coleman's memo of July 2, 1998, and Chapter 28 of the Department's "Project Development Procedures" Manual. When a Local Agency is involved in the acquisition of right-of-way, Local Agency staff shall participate in the First and Second Level Reviews as necessary.

**Adopting Resolutions of Necessity:**

The Department is the responsible agency for obtaining RONs for ALL projects on the State Highway system irrespective of funding, who the lead or implementing agency is, or who is performing the R/W work. When a Local Agency is performing R/W work, the R/W Engineering component shall include preparation of RON documents and exhibits for processing by the Department to the CTC.

The CTC is the responsible body for adopting all RONs on the State Highway System. Although the CTC has ultimate responsibility, State statutes do provide for RONs to be passed by a County Board of Supervisors (Board) or a City Council under the specific circumstances stated below. The following applies to STIP and TCRP projects only; it does not apply to the SHOPP. All SHOPP projects must continue to be heard by the CTC.

Regardless of who performs R/W work, prior to the Board or a City Council passing a RON by the required four-fifths (4/5) vote, the following actions must first have taken place:

- Region/District R/W must seek, on a project-by-project basis, written approval to implement this policy from the Chief of the Division of R/W. Approval considerations include timesaving, convenience for property owners, and/or local sensitivity to project. Additional considerations may be added as the Department gains experience with guideline implementation.
- Upon approval, Region/District R/W will communicate in writing to the Local Public Agency (LPA), the Department's recommendation that RONs may be heard by the Board or the City Council. In all cases, right-of-way activities are to be performed consistent with all policies and procedures outlined in the Department's R/W Manual including the requirement for First and Second Level Review Hearings, and shall be a condition of the Department's recommendation.



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- The LPA will then seek from the Board or City Council, a resolution passed by a four-fifths vote of its membership, agreeing to hear the RON. The Board or City Council must have determined that the acquisition of the real property or interest be in the best interest of the Department, promotes the interest of the county or city, and be necessary for State highway purposes.
- If the project in question requires a cooperative agreement, the agreement will contain language documenting the above. A copy of the resolution from the Board or City Council is to be attached to the fully executed cooperative agreement.
- If no cooperative agreement is required, the Department's written request and resolution from the Board or City Council shall be maintained in the Right of Way project file.
- If a RON is to be contested before the CTC, the presentation will be delivered by the Department's Office Chief for the RON in the Division of Design. All similar appearances before a Board or City Council shall be presented by the Department's District Director or designee, regardless of which agency performed the right-of-way activities.

**Utility Relocation:**

- Where all utility relocations are, or a specific utility relocation is 100 percent funded with "Local Agency" funds, the Local Agency may perform the utility relocation coordination activities they are funding, regardless of the overall funding of the project. All work is to be performed consistent with Department policies and subject to Departmental oversight.
- Where utility relocations are 100 percent "State" funded or specific utility relocations in a jointly funded project are 100 percent "State" funded, the Department is the responsible agency for performing the utility relocations.
- Where particular utility relocations are to be funded with a mix of "Local Agency" and "State" funds, the Department is the responsible agency for performing those utility relocation coordination activities.
- The Department may have agreements currently in force with one or more utility entities, which shall correspondingly bind the Local Agency in those circumstances. Such agreements are pursuant to statute and may prevail over other existing statute if so included in each agreement. If any such agreement is applicable to freeway projects, such applicability may extend beyond the actual freeway right-of-way "footprint" to include those utility relocations reasonably caused by the influence of the freeway portion of the project. If the Local Agency and any such utility entity cannot come to agreement on such applicability, the Department's Project Manager or equivalent, after consultation with both parties, Department's R/W Utility Relocation branch and Department's Legal Division, will make such final determinations of applicability.

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**Department Policy and "Quality Assurance" (Oversight) Responsibilities:**

- When right-of-way activities (including R/W Engineering) are performed by other than the Department, the Department must approve legal descriptions and the condition of title for the right-of-way required for the project, as well as accept title prior to the Department accepting completion of the construction project and opening the project to the public. These requirements shall be so stipulated in the cooperative agreement.
- In ALL cases, R/W, R/W Engineering, and Utility Relocation activities shall be performed consistent with Federal and State law and in accordance with the Department's R/W policies and procedures as outlined in its R/W Manual, the Plans Preparation Manual, and the Land Surveyors' Act. These requirements shall be so stipulated in any required cooperative agreement.
- In ALL cases if R/W, R/W Engineering, Utility Relocation, or Survey activities are performed by an organization other than the Department, the Department will perform "Quality Assurance" reviews on those activities performed in conjunction with the project. Generally, the cost of the Department's "Quality Assurance" for a project shall be funded as agreed to in the cooperative agreement. The cost of the Department's "Quality Assurance" for TCRP projects shall be funded with the TCRP funds as a project cost and shall be so stated in the cooperative agreement.
- When R/W Engineering activities are performed by other than the Department's R/W Engineering units, the Department must approve the R/W Record Map for right-of-way required for the project prior to the Department accepting completion of the construction project. Any final payment will not be released until a Record of Survey of the monumentation effort is filed with the county surveyor, relinquishment and/or vacation documents are prepared, and legal descriptions and maps for disposal have been approved by the Department. These requirements shall be so stipulated in the cooperative agreement.
- When utility relocation activities are performed by other than the Department's R/W staff, the Department must approve the Local Agency prepared relocation plans required for the project prior to advertising the project. In addition, Local Agency's as-built plans of the completed utility relocation must be accepted by the Department prior to the Department accepting completion of the construction project and opening the project to the public. These requirements shall be so stipulated in the cooperative agreement.
- Prior to opening a project to the public when R/W activities are performed by others, the Department must formally accept title to the R/W. In the event that the items specified above have not been completed, title will not be accepted until an amendment to the Cooperative Agreement has been executed. The amendment must identify the work to be completed, the agency responsible, contain appropriate financial guarantees of completion and a completion timetable.

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**DOCUMENTATION AND EXCEPTIONS**

The respective responsibilities that the Department and local agencies have in delivering projects on the State Highway System shall be addressed in the authorizing document (project report, project study report, TCRP application, etc.), and clearly documented in the cooperative agreement.

Any request for exception to the above-stated guidelines shall be in writing, and must be reviewed by Headquarters' R/W Local Programs and Headquarters' R/W Project Delivery prior to being approved by the Chief of the Division of R/W. Included in the request for exception will be a statement as to the unusual circumstances requiring deviation from these guidelines. Exceptions shall be granted on a case-by-case basis. As above, respective responsibilities for delivering the project shall be addressed in the authorizing document (project report, project study report, etc.), and clearly documented in the cooperative agreement.



BRENT FELKER

Chief Engineer

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State of California  
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

**M e m o r a n d u m**

*Flex your power!  
Be energy efficient!*

To: REGION/DISTRICT DIRECTORS

Date: December 5, 2003

  
From: BRENT FELKER  
Chief Engineer

File: ACQUISITION  
General

Subject: Processing of Department Resolutions of Necessity (RON) through the California Transportation Commission (CTC), County Board of Supervisors (Board) or City Councils (Council)

The Uniform Relocation Assistance and Real Property Acquisitions Policy Act requires that the Department to make every effort to acquire real property, or an interest therein, expeditiously by negotiation. Effective negotiations should ensure that all property owner issues are identified and resolved and that owners receive just compensation as entitled by law.

If, however, negotiations are not successful, timely delivery of Capital Outlay Projects may require pursuit of Condemnation Actions to acquire the necessary property rights. The first step in this process is a legal requirement to obtain a Resolution of Necessity (RON). It is crucial that the RON process be carried out effectively and in such a manner as to balance maximum public benefit with least private injury. Protection of property owners' rights throughout the process is essential.

Pending an overall review of the RON process this memo is an interim effort to improve the process through immediate implementation of the following clarifications and interim actions. This will hopefully assist in completing the current process in the most efficient and timely manner. These actions apply in all cases, whether the RON is presented before the CTC, Board, or Council. They are in addition to or in clarification of existing instruction.

- **Emphasize Team Effort:** Design, Right of Way (R/W) and external partners must perform as a team in an effort to resolve property owner issues, during negotiations and also throughout the resolution process.
- **Appearance Request:** If negotiations have failed and the Department must pursue a RON, the property owner has the right to request an appearance before the CTC, Board, or Council to contest the adoption of the RON. In response to the property owners' written request to appear, the District must conduct a First Level Review Hearing which presents another opportunity for resolution at the District level.

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- **First Level:** The purpose of the First Level Review Hearing is to identify and resolve all the property owners' issues, if possible. To do so requires thorough preparation and open consideration of property owner concerns. Mandatory attendance and participation of Design and R/W Managers, as well as the District Director in some instances, are necessary components for success. Clear, concise and complete responses to all of the property owners' concerns must be communicated promptly in writing to the property owner, and to the Condemnation Review Panel if the owner has not withdrawn his or her request to appear. Scheduling of a Second Level Review Hearing, if necessary, by the Condemnation Review Panel will be based on the completeness of these responses.
- **Second Level:** Attendance at the Second Level Review Hearing should be limited to active participants and decision makers only. The Region/District presentation to the Condemnation Review Panel is to be conducted by management level persons from both Design and R/W. The Design manager will present the design portion, and a R/W manager will present the real estate portion.
- **Panel Report Recommendation and Approval:** The Condemnation Review Panel will jointly prepare the Panel Report and recommendation for the Chief Engineer's approval. If the project in question is on the State Highway System the Panel's recommendation to proceed is required as is final approval from the Chief Engineer.
- **Appearance Presentations to the CTC:** The HQ's Design panel member will make the presentation to the CTC. The HQ's R/W panel member (Chairperson), and the Legal panel member will also be present at the CTC meeting. The R/W panel member, and when necessary the Legal panel member, will sit at the presentation table to respond to any R/W or Legal issues raised. A Deputy District Director from the Region/District must also be present at the CTC meeting and must be able to address project history and/or local issues if raised by the CTC or the property owner.
- **Appearance Presentation to a Local County Board / City Council:** The District Director, a designated Deputy District Director or other Managerial level Design staff member will be fully prepared to make the presentation before the Board/Council. A Region/District R/W Manager, and when necessary a Department Legal representative, will be present and immediately available to respond to any issues raised by the Board/Council or the property owner.

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Specific procedures for performing First and Second Level Reviews are found in Project Development Procedures Manual Chapter 28, Article 2. I cannot overemphasize the importance of District management involvement and assurance that adequate staff and resources be dedicated. The goal of the process is to find a resolution of issues that benefits both the public, and the property owner, without the necessity of filing an action of eminent domain.

If you have any questions, please contact your HQ's R/W or Design liaison.

c: Mark Leja, Chief, Division of Design  
Brice D. Paris, Chief, Division of Right of Way  
HQ's Office Chiefs - Right of Way  
Linda Fong, HQ Design  
Terry Abbott, Local Assistance  
Richard B. Williams - Legal  
District/Region R/W and Design Chiefs

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DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

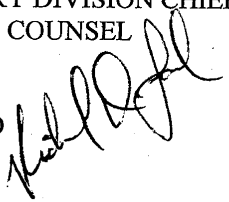
**M e m o r a n d u m**

*Flex your power!  
Be energy efficient!*

To: DISTRICT DIRECTORS  
CHIEF DEPUTY DISTRICT DIRECTORS  
DEPUTY DIRECTORS – R/W, SFPs, DESIGN  
PROJECT DELIVERY DIVISION CHIEFS  
ASSISTANT CHIEF COUNSEL

Date: July 22, 2005

From: RICHARD D. LAND  
Chief Engineer



Subject: Streamlining the Resolution of Necessity Process

When it is necessary for the Department to condemn property for transportation projects, the California Transportation Commission (CTC) must first authorize the condemnation action by adoption of a Resolution of Necessity (RON) in accordance with the Streets and Highways Code pursuant to various sections of the Code of Civil Procedure.

It is crucial that the Department's internal RON process be carried out effectively and in such a manner as to balance maximum public benefit with least private injury. Protection of property owners' rights throughout the process is essential. The CTC will consider adoption of a RON only after the Department has shown due diligence in establishing the project's purpose and need, and to the extent possible, efforts to minimize impacts to affected property owners.

In June 2004, the Department completed a value analysis (VA) study on the RON process. This study was sponsored by the Divisions of Design and Right of Way and Land Surveys and consisted of team members from Design and Right of Way functions from both Headquarters and the districts. The primary goals of the study were to look for ways to enhance and streamline the RON process, and to better define the roles and responsibilities for those involved in carrying out various activities. The study resulted in the development of 26 alternative process recommendations that are summarized in the attached Implementation Plan matrix.

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Guidance in both the Project Development Procedures Manual (PDPM) and the Right of Way Manual have been revised to incorporate the approved study initiatives and to clarify the Department's policies and procedures, see attached. These documents supersede all previous manual versions and are effective immediately.

Access to these updated documents will be available after August 1, 2005, at the following web addresses:

[http://www.dot.ca.gov/hq/oppd/pdpm/chap\\_hm/chapt28/chapt28.htm](http://www.dot.ca.gov/hq/oppd/pdpm/chap_hm/chapt28/chapt28.htm)  
<http://www.dot.ca.gov/hq/row/rowman/manual/chap08/Sec8-01.pdf>  
<http://www.dot.ca.gov/hq/row/rowman/manual/chap09/Sec9-01.pdf>  
<http://www.dot.ca.gov/hq/row/rowman/manual/chap09/Sec9-16.pdf>

The major change in the revised guidance, per request of the District Directors and by way of this memo, is the delegation of authority from the Chief Engineer to the District Director to combine the District Condemnation Evaluation Meeting and the Condemnation Panel Review Meeting (formerly the First and Second Level Meetings). This delegation is to be used when there are no known design issues and is intended to allow the district more flexibility and control over the scheduling of meetings with the property owner as well as for the preparation of the Department's position on outstanding issues. With this delegation comes the responsibility of the district to prepare the Panel Report, and to prepare the District Director or a Deputy District Director to present the Department's draft CTC presentation to the Chief Engineer at the RON Dry Run held at Headquarters. The Single Focal Point (SFP) will be responsible for coordinating the district's handling of the necessary deliverables and will be responsible for assessing potential risks for the Department. The district will be required to meet the Office of CTC Liaison's predetermined deadlines for submittal of documents and presentations which can be found at: <http://onramp/hq/transprog/>.

The Chief Engineer will determine at the conclusion of the district's RON Dry Run presentation if the RON is ready to move forward to the CTC for consideration. The district must keep in mind that the Department typically has only one chance to present the Department's position to the CTC to obtain a favorable ruling.



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To facilitate implementation of the revised guidance, the Condemnation Panel will be contacting each of the districts through the SFP to coordinate training for this effort.

Should you have questions with regard to the RON Process VA Study, the Implementation Plan, or the attached documents, you can contact Linda Fong, DOD, at (916) 653-8559 or Don Grebe, HQ R/W & LS, at (916) 654-4456.

**Attachments**

- (BFelker's 12-5-03 memo: Processing of Department Resolutions of Necessity (RON) through the California Transportation Commission (CTC), County Board of Supervisors (Board) or City Councils (Council)
- RON Process VA Study Implementation Plan – Status Update 06-28-05
- PDPM, Chapter 28 – Resolutions of Necessity
- Right of Way Manual, Chapter 8 Acquisition (Section 8.01.18.00) and Chapter 9 Condemnation (Sections 9.01.01.00 to 9.01.10.00, & 9.16.00.00)
- Condemnation / Resolution of Necessity Appearance Flowcharts

c: Mark Leja  
Bimla Rhinehart  
Ross Chittenden  
Terry Abbott  
Diane Eidam  
Stephen Maller